

TYPE REQUIREMENTS FOR BRIEFS AND OTHER PAPERS

Federal Rule of Appellate Procedure 32 contains detailed requirements for the production of briefs, motions, appendices, and other papers that will be presented to the judges. Rule 32 is designed not only to make documents more readable but also to ensure that different methods of reproduction (and different levels of technological sophistication among lawyers) do not affect the length of a brief. The following information may help you better understand Rule 32 and two associated local rules. The Committee Note to Rule 32 provides additional helpful information.

1. Rule 32(a)(1)(B) requires text to be reproduced with “a clarity that equals or exceeds the output of a laser printer.” The resolution of a laser printer is expressed in dots per inch. First generation laser printers broke each inch into 300 dots vertically and horizontally, creating characters from this 90,000-dot matrix. Second generation laser printers use 600 or more dots per inch in each direction and thus produce a sharper, more easily readable output; commercial typesetters use 1200 to 2400 dots per inch. This memorandum was produced by a laser printer at 600 dots per inch. (If you are reading this on the court’s web site, its resolution depends on your monitor; you can print the file at any resolution your printer supports.)

Any means of producing text that yields 300 dots per inch or more is acceptable. Daisy-wheel, typewriter, commercial printing, and many ink-jet printers meet this standard, as do photocopies of originals produced by these methods. Dot matrix printers and fax machines use lower resolution, and their output is unacceptable. Although Rule 32(a) applies only to briefs and motions, we *strongly* urge counsel to maintain the same standard of clarity in appendices too. Reproduction of a faxed copy of the district court’s opinion, or text from Lexis or Westlaw printed by a dot-matrix printer, is needlessly hard to read and should be avoided. Use photocopies of the district court’s original opinion and other documents in the record.

2. Rule 32(a)(5) distinguishes between proportional and monospaced fonts, and between serif and sans-serif type. It also requires knowledge of points and pitch.

Proportionally spaced type uses different widths for different characters. Most of this memorandum is in proportionally spaced type. A monospaced font, by contrast, uses the same width for each character. Most typewriters produce monospaced type, and most computers also can do so using fonts with names such as “Courier,” “Courier New,” and “Monotype.com.” The court prefers proportionally spaced type, but the rule leaves the choice to the author.

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths.

This sentence is in a monospaced font; as you can see, the m and i have the same width.

Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. The next line shows two characters enlarged for detail. The first has serifs, the second does not.



Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of submissions to serif type, although sans-serif type may be used in headings and captions. This is the same approach magazines, newspapers, and commercial printers take. Look at a professionally printed brief; you will find sans-serif type confined to captions, if it is used at all.

This sentence is in New Century Schoolbook, a proportionally spaced font with serifs. Baskerville, Bookman, Caslon, Garamond, and Times are other common serif faces.

This sentence is in Helvetica, a proportionally spaced sans-serif font. Arial and Eurostile are other common sans-serif faces.

Many type designers use variations of these names. New Baskerville, Book Antiqua, Calisto, Century Schoolbook, Bookman Old Style, and Times New Roman all are proportionally spaced serif faces. You should avoid faces designed for display. Bodoni and other faces with exaggerated stroke widths are effective in headlines but hard to read in long passages.

Type must be large enough to read comfortably. For a monospaced face, this means type approximating the old “pica” standard used by typewriters, 10 characters per horizontal inch, rather than the old “elite” standard of 12 characters per inch. Because some computer versions of monospaced type do not come to exactly 10 characters per inch, Rule 32(a)(5)(B) allows up to 10½ per inch, or 72 characters (including punctuation and spaces) per line of type.

Proportionally spaced characters vary substantially in width, so a limit of characters per line is not practical. Instead the court requires a minimum of 12-point type. Circuit Rule 32 permits the use of 12-point type in text and 11-point type in footnotes; Fed. R. App. P. 32(a)(5)(A) standing alone would have required you to use 14-point type throughout.

“Point” is a printing term for the height of a character. There are 72 points to the inch, so capital letters of 12-point type are a sixth of an inch tall. This memo is in 12-point type. Your type may be larger than 12 points (though the court prefers 12-point to 14-point type), but it cannot be smaller. All word processing packages can produce 12-point type. Many also can expand or condense the type using tracking controls, or you may have access to a condensed version of the face (such as Garamond Narrow). Do not use these. Condensed type is not permitted. It offers no benefit to counsel under

an approach that measures the length of briefs in terms of words rather than pages, and it is to your advantage to make the brief as legible as possible.

This is 9-point type.

This is 10-point type.

This is 11-point type.

This is 12-point type.

This is 12-point type, condensed. Condensed type is not acceptable.

This is 13-point type.

This is 14-point type.

3. Rule 32(a)(6) provides that the principal type must be a plain, roman style. In other words, the main body of the document cannot be bold, italic, capitalized, underlined, narrow, or condensed. This helps to keep the brief or motion legible. Italics or underlining may be used only for case names or occasional emphasis. Boldface should be used sparingly. The court discourages use of all-capitals text for any purpose other than the caption on the cover and first page, and section names such as “ARGUMENT”. Although the rule does not forbid the use of occasional all-capitals text elsewhere, please be judicious. Stretches of all-caps text are very hard to read, and some judges therefore just skip them. If you want your argument headings to be read, avoid all-capitals text or boldface, and do not underline. Underlined, all-caps, boldface, single-spaced text in headings is almost illegible. Try this form:

ARGUMENT

I. The Suit is Barred by the Statute of Limitations

A. Perkins had actual knowledge of the contamination more than six years before filing suit

This form is discouraged:

ARGUMENT

I. THE SUIT IS BARRED BY THE STATUTE OF LIMITATIONS

A. Perkins had actual knowledge of the contamination more than six years before filing suit

If you simply must use italics and underlining, try something like this:

ARGUMENT

I. The Suit is Barred by the Statute of Limitations

A. Perkins had actual knowledge of the contamination more than six years before filing suit

4. Rule 32(a)(7) determines the maximum length of a brief. It is designed to permit you to present as much argument as a 50-page printed brief contains. The great variability of proportionally spaced type makes it necessary to express this length in words rather than pages. Other rules make this approach applicable to other documents. For example, Fed. R. App. P. 29(d) provides that a brief on behalf of an *amicus curiae* may be no more than half the length allowed by Rule 32(a)(7).

Lawyers who choose monospaced type may avoid word counts by counting lines of type. Unless the brief employs a lot of block quotes or footnotes it will be enough to count pages and multiply by the number of lines per page. (Fifty pages at 26 lines per page is 1,300 lines.) The line-count option is not available when the brief uses proportional type.

Principal briefs of 30 pages or less, and reply briefs of 15 pages or less, need not be accompanied by a word or line count. Think of Rule 32(a)(7)(A) as a safe harbor. Lawyers who need more should use Rule 32(a)(7)(B). A brief that meets the type volume limitations of Rule 32(a)(7)(B) is acceptable without regard to the number of pages it contains. The court encourages counsel to choose legible type and wide margins even though that increases page length.

Because block quotes and footnotes count toward the type volume limit, these devices do not affect the length of the allowable presentation. A brief with 10% text and 90% footnotes complies with the rule, but it will not be as persuasive as a brief with the opposite ratio.

5. Circuit Rule 31(e) requires parties to file with the court, and to serve on any other party separately represented by counsel, a disk containing a copy of the brief. This rule requires a disk only if the brief was prepared on a computer; parties who prepared the brief by typewriter should so inform the clerk's office. Only counsel need be served; it is not necessary to serve disks on litigants proceeding *pro se*, who likely lack the equipment needed to use the disks.

Rule 31(e) says that the disk must contain "nothing more than the text of the brief". This does not imply that you need to cut out the table of contents, formatting, and the like. The language is designed to convey the idea that the disk should not contain any extra materials, such as electronic versions of the trial transcript.

File the digital copy of the brief using whatever word processing software was used in its preparation. If you prepared the brief with WordPerfect, file in that format. The difference among versions of a software package (5.1, 6.1, 7.0) does not matter; file what you have. If you used Microsoft Word, that's fine too. In fact, any file format is OK—as are disks using DOS, Windows, Macintosh, Unix, and OS/2 operating systems. If you think that your software is so exotic that the court will not be able to translate its format to the software the judges use, you can add a plain text version (ASCII or Unicode), but this is not obligatory.

If you want to ensure that the judges can see and print the brief with the fonts, format, appearance, and pagination of the original, you may add to the disk a copy of the brief in PDF (an acronym for “portable document format”). Adobe Acrobat Exchange software can produce PDF documents from any word processing file. Acrobat Reader software, which reads these files, is available for free on most computer platforms. The version of this document on the court’s web site is in PDF format. In the future, federal courts throughout the nation may require filings in PDF. For now, however, it is just a suggestion. If you have Acrobat software, you may want to experiment with this possibility.

Please feel free to telephone the clerk’s office with any questions you may have. Our telephone number is (312) 435-5850.

THANK YOU!